IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1142 of 2007
To
FIRST APPEAL No.1161 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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THE SPL. LAND ACQ. OFFICER & ORS. - Appellants
Versus
ADAM AHMED BAPU SINCE DECD. & ORS. - Respondents

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Appearance :

First Appeal Nos.1142 to 1151 of 2007
MR SS SHAH, GP for Appellants.
MR MM SAIYED for Respondents.

First Appeal Nos.1152 to 1161 of 2007
MS MINI NIAR, AGP for Appellants.
MR MM SAIYED for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/03/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated April 30, 2005 rendered by the learned Civil Judge (S.D.), Bharuch, in L.A.R. Case Nos.1280 of 1997 to 1299 of 1997 by which the claimants have been awarded additional amount of compensation at the rate of Rs.28.20 Paise per square metre for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.80 Paise per square metre by his award dated September 29, 1994.

2. The Executive Engineer, Narmada Yojna Naher, Division No.2/6, Bharuch, proposed to the State Government to acquire agricultural lands of Village: Itola, Taluka: Amod, District: Bharuch, for the public purpose of construction of Denva Distributory Canal under the Narmada Project. On

perusal of the said proposal, the State Government was satisfied that the lands of Village: Itola mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued by the State Government, which was published in the official gazette on May 6, 1992. After publication of notification, necessary inquiries were made by the Special Land Acquisition Officer under Section 5(A-2) of the Act and a report was forwarded by him to the State Government. On the basis of the said report, the State Government made a declaration under Section 6 of the Act, which was published in the official gazette on June 28, 1992. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.37.50 Paise per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated September 29,

1994 offered compensation to the claimants at the rate of Rs.1.80 Paise per square metre for their acquired lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as L.A.R. Case Nos.1280 to 1299 of 1997.

3. On behalf of the claimants, witness Haji Ismail Haji Adam was examined at Exhibit 43. The witness mentioned that the lands acquired were highly fertile and that each claimant was able to raise crops of cotton, *juvar*, *tuver*, etc. The witness mentioned that each claimant was able to earn net income of Rs.84,600=00 per *vigha* per year from the sale of agricultural produces. The witness claimed

that his Village: Itola was situated at a distance of about 3.00 Kilometres from Village: Roza Tankariya. The witness further mentioned that the agricultural lands of Village: Roza Tankariya were acquired for ONGC Project for which notification under Section 4(1) of the Act was published on April 5, 1990. The witness stated that in those cases, the Reference Court had awarded compensation to the claimants at the rate of Rs.25/- per square metre and, therefore, on the basis of the said judgment, the claimants were entitled to enhanced compensation. The witness also asserted that the lands, which were acquired from Village: Roza Tankariya, were similar in all respects to the lands acquired in the instant case including fertility and were situated quite near the acquired lands. The witness further stated that the award of the Reference Court rendered in respect of the lands of Village: Roza Tankariya was challenged by the Acquiring Authority before the High Court in First Appeal No.3108 of 2000 to 3121 of 2000, but those appeals were dismissed by the High Court vide

judgment dated November 27, 2000. It was also informed by the said witness that the judgment of the High Court was challenged by the Acquiring Authority before the Supreme Court by filing petition(s) for Special Leave to Appeal (Civil) Nos.7570-7578 of 2001, but the Supreme Court had dismissed the same by order dated August 27, 2001. The witness produced copy of the previous award of the Reference Court relating to the lands of Village: Roza Tankariya at Exhibit 30 whereas the judgment of the High Court rendered in First Appeal Nos.3108 of 2000 to 3121 of 2000 was produced at Exhibit 31, and a copy of the order passed by the Supreme Court in Petition(s) to Special Leave to Appeal (Civil) No.7570-7578 of 2001 at Exhibit 32. This witness was cross-examined by the learned counsel for the Acquiring Authority at length. However, the statements made by the witness that the lands of Village: Roza Tankariya, which were acquired earlier, were situated quite near the lands acquired in the instant case and that the lands acquired from Village: Roza Tankariya were similar in all respects to

the lands acquired in the instant case, were allowed to go unchallenged.

4. It may be mentioned that no witness was examined on behalf of the appellants, but an index indicating sale of lands, which had taken place in the last five years, was produced by the appellants along with the list Exhibit 50.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court, as confirmed by the High Court and the Supreme Court, was relevant for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that notification under Section 4(1) of the Act was published in the official gazette on April 5, 1990 for acquiring lands from Village: Roza Tankariya whereas in the instant case, it was published in the official gazette on May 6, 1992 and, therefore, in view of time-gap of about two

years between the publications of notifications in the official gazette, the claimants were entitled to reasonable rise in price of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.28.20 Paise per square metre by the impugned judgment giving rise to these appeals.

6. This Court has heard Ms.Mini Niar, learned Assistant Government Pleader for the appellants, and Mr.M.M.Saiyed, learned counsel for the respondents at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes all the oral as well as documentary evidence adduced by the parties before the Reference Court.

7. From the record of the case, it is evident that the claimants could not make good their assertion that each claimant was able to earn net

income of Rs.84,600=00 per *vigha* per year from the sale of agricultural produces. However, that fact is of little relevance as the enhanced compensation was never claimed on yield basis. The record does not indicate that the enhanced compensation was also claimed on comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of Village: Roza Tankariya, which was produced at Exhibit 30. A perusal of Exhibit 30 indicates that certain lands of Village: Roza Tankariya were acquired for public purpose of construction of the Central Process Facility at Gandhar, pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on April 5, 1990. Therein, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.3/- per square metre by his award dated February 26, 1993. Feeling aggrieved, the claimants had sought references. Accordingly, the reference were made to District Court, Bharuch,

where they were numbered as L.A.R.Case Nos.1917 to 1930 of 1993. In those references, the claimants had examined nine witnesses namely; (1) Rameshchandra Krishnashanker; (2) Suleman Haji; (3) Yakub Ahmed Ibrahim; (4) Ibrahim Haji Adam; (5) Hanuman Ishvarbhai Patel; (6) Jagdishbhai Hathibhai; (7) Shivlal Kalidas Patel; (8) Om Prakash Pandya; and (9) Mahendrabhai Nanubhai, in support of their claim for enhanced compensation whereas on behalf of the Acquiring Authority, witness Hareshchandra Kanaiyalal Shah was examined at Exhibit 81. On appreciation of the evidence adduced by the parties, the Reference Court *vide* judgment and award dated May 5, 2000 awarded additional amount of compensation at the rate of Rs.22/- per square metre. The record further shows that the above mentioned award of the Reference Court relating to the lands of Village: Roza Tankariya was challenged before the High Court in First Appeal Nos.3108 to 3121 of 2000, but the appeals were dismissed by the Division Bench of this Court by judgment dated November 27, 2000.

The record also indicates that the judgment of the High Court was challenged by the Acquiring Authority before the Supreme Court by filing Petition(s) for Special Leave to Appeal (C) Nos.7550-7578 of 2001, but the said petitions were dismissed by the Supreme Court *vide* order dated August 27, 2001. The claim made by the witness for the claimants that the lands of Village: Roza Tankariya, which were acquired earlier, were situated quite near the lands acquired in the instant case, is not challenged by the appellants nor the claim made by the witness for the claimants that the lands, which were acquired from Village: Roza Tankariya, were similar in all respects to the lands acquired in the instant case from Village: Itola, was disputed by the appellants. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that the Reference Court did not commit any

error in placing reliance on the previous award of the Reference Court, as confirmed by the High Court and the Supreme Court, for the purpose of determining the market value of the lands acquired in the instant case. The calculation of compensation payable to the claimants is not demonstrated to be incorrect. In view of several decisions on the point, the Reference Court was justified in granting benefit of rise in price of the lands at the rate of 10% per annum to the claimants because of time-gap of about two years in publication of notifications issued under Section 4(1) of the Act.

8. On re-appreciation of the evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court, to which well-settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of the evidence. Therefore, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra